

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 12-61
Under 47 U.S.C. § 160(c) From	)	
Enforcement of Certain Legacy	)	
Telecommunications Regulations	)	

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**REPLY COMMENTS OF AT&T**

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April 24, 2012

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## INTRODUCTION AND SUMMARY

Acting on a recent presidential directive,<sup>1</sup> the Commission has begun an “agency-wide process of identifying outmoded or counterproductive rules.”<sup>2</sup> The regulations identified in USTelecom’s petition, designed for a monopoly era long since passed, fall squarely into that category. They serve no purpose today and merely frustrate the Commission’s core ambition to “facilitate the transition” from legacy PSTN networks to the “all-IP network” of the future.<sup>3</sup> For example, requiring ILECs to obtain section 214 approval before retiring PSTN services in favor of next-generation IP services would artificially prop up the PSTN by making that technological transition more costly and burdensome. Every dollar spent on sustaining legacy services is a dollar not spent on next generation services, and rational ILECs will be less likely to sink billions of dollars in building an all-IP infrastructure if they face the risk that, even after making those investments, legacy obligations will require them to maintain a wastefully duplicative set of circuit-switched services for the indefinite future.

Of equal concern, all of the rules targeted in USTelecom’s petition disproportionately hobble one set of competitors—ILECs—that are no longer dominant in any relevant market and are, in fact, falling further behind cable companies in the provision of both broadband services and higher-layer IP voice services. *See* Section I.A.2, *infra*. It would be perverse to continue

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<sup>1</sup> See Executive Order on Regulation and Independent Regulatory Agencies, Exec. Order No. 13579, 76 Fed. Reg. 41587 (July 14, 2011).

<sup>2</sup> FCC, *Preliminary Plan for Retrospective Analysis of Existing Rules*, at 2 (Nov. 7, 2011), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1107/DOC-310874A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1107/DOC-310874A1.pdf).

<sup>3</sup> Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, 26 FCC Rcd 17663, 17926 ¶ 783 (2011) (“*USF/ICC Reform Order*”). As used in that *Order* and in these comments, the terms “PSTN” (Public Switched Telephone Network), “POTS” (Plain Old Telephone Service), and “TDM” (Time-Division Multiplexing) denote legacy circuit-switched networks, whereas “IP” denotes networks based on the Internet Protocol.

regulating ILECs as though they were still 1980s-era monopolists when some commentators have predicted that cable companies are likely to end up as broadband monopolists in their own right.<sup>4</sup> Granting USTelecom's petition is a critical step in eliminating regulatory obligations that exacerbate this regulatory imbalance and distort the course of competition. Finally, the Commission should grant the petition not only to meet its own policy objectives, but also to satisfy its statutory mandate under section 706, which "directs the Commission to 'encourage the deployment' of broadband 'on a reasonable and timely basis'"<sup>5</sup> by "utilizing . . . regulatory forbearance" to "remove barriers to infrastructure investment."<sup>6</sup>

In short, AT&T supports USTelecom's petition in its entirety. In accord with the Commission's public notice,<sup>7</sup> AT&T identifies the following requirements on which these reply comments will focus:

***Service Discontinuance Approval Requirements (Category 10).*** Under section 214(a) and related regulations, a carrier may not "discontinue, reduce, or impair service to a community, or part of a community, unless and until" it obtains approval from the Commission. As an initial matter, it is quite unclear whether section 214 approval is even required today in the circumstances covered by USTelecom's petition: where a carrier seeks not to withdraw from a

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<sup>4</sup> See, e.g., Craig Moffett *et al.*, *U.S. Cable and U.S. Telecommunications: Broadband End Game?*, Bernstein Research, at 1, 7 (2010) ("[C]able's advantaged infrastructure will win the broadband wars. . . . Cable's share of 2Q 2010 net broadband additions rose steeply, to 91.4%, versus 67% in the prior quarter and a mere 41% in the year-ago quarter."); see also Susan P. Crawford, *The Communications Crisis in America*, 5 Harvard L. & Pol'y Rev. 245, 248, 261 (2011) ("Given the tremendous economies of scale and cost advantages of the cable industry, being a wireline phone company is not a great business these days . . . . The emergence of a *de facto* cable monopoly in high-speed wired Internet access in most of the country cannot stay a secret.").

<sup>5</sup> *Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903, 906 (D.C. Cir. 2009).

<sup>6</sup> 47 U.S.C. § 1302 (codifying section 706 of the Telecommunications Act of 1996).

<sup>7</sup> See Public Notice, *United States Telecom Association Petition for Forbearance From Certain Telecommunications Regulations*, WC Docket No. 12-61 (rel. Mar. 8, 2012).

market, but to upgrade its service from one technological platform (POTS) to another (IP). In that context, consumers receive all the essential functionalities as before, plus additional functionalities that can only benefit them, and substituting a superior new service for a lesser-included legacy service can hardly be said to “discontinue, reduce, or impair service.”<sup>8</sup> The Commission should clarify that section 214 is inapplicable in these circumstances or, at a minimum, grant forbearance to remove uncertainty on that threshold question and thereby eliminate the investment-detering risk that section 214 will later be deemed to apply.<sup>9</sup>

On the merits, requiring section 214 approval in the circumstances at issue here, when a carrier is merely substituting an IP-based offering for a traditional PSTN service, is not necessary to ensure just and reasonable rates, protect consumers, or serve the public interest. Section 214 was originally designed to protect consumers from the loss of all service when the sole monopoly provider leaves a market. That concern is inapplicable, and section 214 serves no productive purpose, where consumers have adequate competitive alternatives, as they do today. That conclusion should not be controversial: the Commission itself relied on the same basic reasoning when, in 1994, it forbore from the continued application of section 214 to wireless carriers. Forbearance follows *a fortiori* in the circumstances presented here, where, even apart

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<sup>8</sup> See, e.g., 47 U.S.C. § 214(a) (“[N]othing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.”); Memorandum Opinion and Order, *Regulatory Policies Concerning the Provision of Domestic Public Message Service by Entities Other Than the Western Union Telegraph Company and Proposed Amendments to Parts 63 and 64 of the Commission’s Rules*, 75 F.C.C.2d 345, 376 ¶ 103 (1980) (“*Public Message Service Order*”); see also Memorandum Opinion and Order, *Western Union Telegraph Co. Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities*, 74 F.C.C.2d 293, 296 ¶ 7 (1979) (“[I]n situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself.”) (“*Western Union Order*”).

<sup>9</sup> See *AT&T Inc. v. FCC*, 452 F.3d 830, 834-36 (D.C. Cir. 2006) (holding that the Commission has authority to grant “forbearance from uncertain regulatory obligations”).

from the ILECs' *competitors*, the ILECs *themselves* (or their corporate affiliates) will continue offering consumers the same service features as before, albeit over a different technological platform, plus additional features that can only benefit consumers.

Just as important, maintaining section 214 requirements would be as harmful to competition as it would be unnecessary. As discussed, requiring providers that have deployed new IP networks to seek piecemeal section 214 approval before they can retire their PSTN networks would succeed only in increasing the anticipated costs of making this technological transition in the first place. That is an obvious disincentive to investment: carriers will be less likely to upgrade to IP networks if they fear that, once they have done so, they may indefinitely bear the wasteful costs of maintaining two redundant networks. Finally, although several commenters oppose forbearance on the ground that some customers may have idiosyncratic preferences for legacy PSTN services, that position simply quarrels with a policy determination the Commission has already made: carriers should make the leap from legacy PSTN networks to next-generation all-IP networks as quickly as is feasible.

***Rules Governing Notice of Network Changes (Category 9).*** The Commission should also forbear from its short-term notice-of-network-change rules to the extent they require the Commission to give duplicative notice to (previously notified) carriers affected by network changes before the clock for objections may start running. The Commission's rules require ILECs to provide notice to other carriers and the Commission before making certain network changes. Although interconnecting carriers may object to the *timing* of a short-term change, they cannot block it; instead, their only potential remedy is a delay (of no more than six months) to enable them to adapt their own networks. Under existing rules, the period for filing such timing objections is triggered not by notice to the affected carriers, but by the Commission's issuance of

a Public Notice about the network change. This makes no sense. Instead, the clock for objections should begin to run immediately after a carrier receives formal notice from the ILEC. There is no need to wait for a redundant Public Notice from the Commission—a process that can (and often does) take months. Especially because most network changes are uncontroversial and provoke no carrier objections, this rule injects unnecessary delay and uncertainty into ILECs' plans to upgrade their networks.

***Part 32 Uniform System of Accounts and Property Record Rules (Categories 4 and 5).***

The Commission's Uniform System of Accounts ("USOA") rules require ILECs to maintain two sets of accounting books: one "real" set that conforms to Generally Accepted Accounting Principles ("GAAP"), and a second, "regulatory" set that conforms to the byzantine rules in Part 32. But the latter rules were designed for a world of rate-of-return regulation and serve no purpose today for price cap carriers. Even regulators depend on those carriers' "real" books, and the Commission does not even review the "regulatory" books. Requiring price cap carriers to produce these unnecessary accounting records diverts substantial resources from more productive endeavors, including broadband deployment, and it distorts competition by imposing compliance costs on ILECs alone.

The Commission should thus forbear from these rules as to price cap ILECs and permit such ILECs to maintain one set of books consistent with GAAP. The data recorded as part of GAAP accounting are more than adequate to fulfill any federal regulatory purpose, and AT&T will continue to work with state regulators to ensure that they have access to whatever data they require.

Finally, the Commission should also eliminate the outdated Part 32 property records rules. The Commission recognized over a decade ago that these burdensome requirements served no

purpose and should be eliminated “in three years.” The Commission should follow through on that judgment and grant forbearance now.

## **DISCUSSION**

### **I. THE COMMISSION SHOULD FORBEAR FROM APPLYING SECTION 214’S DISCONTINUANCE REQUIREMENTS WHEN A CARRIER TRANSITIONS TO IP-BASED SERVICES**

AT&T strongly supports USTelecom’s request for forbearance from “service discontinuance approval requirements” under 47 U.S.C. § 214 “where a carrier makes available IP broadband services (at least 4 Mbps download, 1 Mbps upload) and, as a result of the availability of such new services, seeks to discontinue a preexisting service offering that relies on other technology.” Petition at 59. As discussed in Section I.A below, it no longer serves any valid purpose to apply section 214 requirements in the circumstances USTelecom identifies. And as discussed in Section I.B, those requirements create substantial impediments and disincentives for investment in all-IP networks, thereby triggering the Commission’s obligation under section 706 to “utiliz[e] . . . regulatory forbearance” to remove such “barriers to infrastructure investment.”<sup>10</sup>

#### **A. Section 214 Serves No Purpose in the Circumstances USTelecom Identifies**

USTelecom does not seek forbearance from section 214 discontinuance requirements across the board. Instead, it seeks forbearance only when a carrier replaces legacy services with

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<sup>10</sup> 47 U.S.C. § 1302(a); *see also* Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14856, 14859 ¶¶ 3 n.8, 8 (2005) (the 1996 Act provides the Commission with “express directives . . . to encourag[e] broadband deployment, generally, and promot[e] and preserv[e] a freely competitive Internet market, specifically”) (“*Wireline Broadband Order*”), *aff’d*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

IP-based offerings.<sup>11</sup> Section 10 of the Communications Act requires the Commission to forbear from applying any statutory or regulatory obligation that is “not necessary” to ensure “just and reasonable” rates or to protect consumers, and where forbearance is “consistent with the public interest.”<sup>12</sup> That standard is plainly met in the service context at issue here.

***1. The statutory forbearance criteria are easily met***

Section 214(a) provides, in relevant part, that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.” 47 U.S.C. § 214(a). Congress adopted that requirement in 1943, when there was typically only one provider of telecommunications services in any given community. As the Commission later explained, “Congress was concerned that discontinuance by the only carrier serving a market . . . would leave the public without adequate communications service,” either from the carrier discontinuing service or from anyone else.<sup>13</sup> That historical purpose is doubly inapplicable in this context, where (1) consumers can choose among an array of competitive alternatives to an ILEC’s services, and (2) even the wireline incumbent is not exiting the market but is simply replacing a legacy service with an IP service.

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<sup>11</sup> Petition at 59. USTelecom also does not seek forbearance from any applicable requirement that “[p]roviders . . . give notice of any service discontinuance to customers and the Commission.” *Id.*

<sup>12</sup> 47 U.S.C. § 160(a); *see Fones4All Corp. v. FCC*, 550 F.3d 811, 815 (9th Cir. 2008) (“The FCC is required to grant a petition for forbearance if the FCC determines that all three of the [statutory] requirements are met.”).

<sup>13</sup> First Report and Order, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 F.C.C.2d 1, 30 ¶ 128 (1980) (citing 89 Cong. Rec. 785-87 (1943)); *see also Total Telecomms. Servs., Inc. v. Am. Tel. & Tel. Co.*, 919 F. Supp. 472, 480 (D.D.C. 1996); *Western Union Order*, 74 F.C.C.2d at 295 ¶ 6; Verizon Comments at 6.

First, as USTelecom demonstrates, consumers today “can choose from telephony services provided by competitive local exchange carriers (‘CLECs’), cable operators, and fixed and mobile wireless providers.”<sup>14</sup> This point is no longer subject to serious dispute. As the Commission recently recognized, and as we discuss further in Section I.A.2 below, the legacy telephone “system is eroding rapidly as demand for traditional telephone service falls, with consumers increasingly opting for wireless, VoIP, texting, email, and other phone alternatives.”<sup>15</sup> The Commission cited similar competitive pressures when, in 1994, it forbore from section 214 obligations in the wireless context.<sup>16</sup> And of course VoIP providers (including cable operators) virtually never have legacy voice networks they must maintain as they roll out state-of-the-art IP services. Significantly, these two classes of providers—mobile wireless carriers and VoIP providers—are the primary competitors of wireline telcos and the main sources of telco line loss over the past decade (see below). The Commission would badly skew competition and harm consumers if it continued to saddle wireline telcos with legacy regulatory burdens that raise the costs of upgrading their networks to compete with these ascendant rivals.

In any event, even if consumers had *no* competitive alternatives to an ILEC’s services, section 214 obligations would still be needless in the circumstances defined in USTelecom’s petition, where an incumbent is upgrading its services rather than discontinuing them altogether. In that setting, there is *by definition* no prospect that customers will be left without a substitute service: the carrier is not withdrawing from the market, but is simply changing its technological

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<sup>14</sup> See Petition, Appendix B, at 1; see also Section I.A.2, *infra*.

<sup>15</sup> *USF/ICC Reform Order*, 26 FCC Rcd at 17872-73 ¶ 648; see *id.* at 17673 ¶ 22.

<sup>16</sup> Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1480-81 ¶ 182 (1994) (“*Second CMRS Report*”) (“[T]he discontinuance application is unnecessary to protect consumers” whenever “adequate substitute services are abundantly available[.]”); see Section I.B, *infra* (discussing wireless section 214 forbearance).

platform. *See* Verizon Comments at 6-7.<sup>17</sup> For that reason alone, it makes no sense to argue, as some forbearance opponents do, that a supposed dearth of competition requires continued application of section 214 obligations in these circumstances.

Of course, this latter point suggests not only that forbearance from section 214 obligations is warranted in this context, but also that those obligations may not apply in the first place. Several decades ago, the Commission rejected the “application of Section 214 in situations where the accessibility of a service remains virtually unchanged, while the method of customer access varies,” particularly in “technologically dynamic” settings like this.<sup>18</sup> Indeed, the Commission found, applying section 214 where “technological changes have led to new means of offering” is affirmatively counterproductive because it “impose[s] burdens on firms wishing to continue providing service in a more efficient and cost-effective manner.”<sup>19</sup> The same is true here. As discussed below, application of discontinuance requirements where a carrier seeks to substitute an IP-based offering for legacy POTS would be as harmful as it is needless. The Commission should dispel the investment- and innovation-detering uncertainty about the future enforcement of section 214 requirements in this context by forbearing from those requirements insofar as they might otherwise be found to apply.<sup>20</sup>

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<sup>17</sup> *See generally USF/ICC Reform Order*, 26 FCC Rcd at 17685 ¶ 63 (“Interconnected VoIP services . . . increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.”).

<sup>18</sup> *Public Message Service Order*, 75 F.C.C.2d at 376 ¶ 103.

<sup>19</sup> *Id.* at 376-77 ¶¶ 103-04.

<sup>20</sup> *See AT&T v. FCC*, 452 F.3d at 834-36. In addition to proceeding through forbearance, the Commission could also make a blanket section 214 determination covering the circumstances presented in USTelecom’s petition. *See, e.g., Time Warner Telecom*, 507 F.3d at 223 (affirming the Commission’s decision to make a blanket section 214 determination, explaining that “petitioners point to no authority that prevents the FCC from granting a blanket certification”).

**2.     *The petition's opponents identify no valid basis for denying forbearance***

Many of USTelecom's opponents argue that the petition should be denied on the ground that USTelecom provided insufficiently granular, market-by-market analysis of competitive conditions.<sup>21</sup> The opponents lean heavily for this point on the *Phoenix Forbearance Order*, where, citing supposed deficiencies in Qwest's market-specific proof, the Commission denied forbearance from various unbundling and dominant carrier requirements with respect to legacy facilities and services.<sup>22</sup> Even if the *Phoenix Forbearance Order* were correctly decided on its own terms, which AT&T disputes,<sup>23</sup> it would be inapposite here.

First, the relief sought in the two proceedings is completely different. In the *Phoenix* proceeding, an ILEC sought to continue providing the *same legacy services* free of dominant carrier regulation and section 251(c)(3) unbundling obligations. In this proceeding, ILECs are seeking to substitute *new IP services* for legacy services without having to jump through section 214 hoops before completing that transition. The Commission's resolution of the *Phoenix* issue, which turned exclusively on competitive market dynamics, has no logical bearing on its resolution of the issue presented here, which the Commission should resolve by finding that the PSTN-to-IP transition will make ILEC consumers better rather than worse off, irrespective of competitive market dynamics. Indeed, as discussed below, the Commission has already made clear that it wishes to take all available steps to expedite that very transition.

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<sup>21</sup> See Broadview *et al.* Comments at 20; COMPTTEL Comments at 11.

<sup>22</sup> See Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622 (2010) ("*Phoenix Forbearance Order*"), appeal pending *sub nom. Qwest Corp. v. FCC*, No. 10-9543 (10th Cir. filed July 30, 2010).

<sup>23</sup> AT&T has intervened in support of Qwest in the pending Tenth Circuit appeal of the *Phoenix Forbearance Order* and maintains that the *Order* was erroneous even in the context presented in that proceeding.

Second, the *Phoenix Forbearance Order* involved none of the same section 706 concerns presented here about disincentives to invest in advanced telecommunications networks, and the Commission therefore faced no obligation under that provision to “utiliz[e] . . . regulatory forbearance” to “remove barriers to infrastructure investment.”<sup>24</sup> In particular, the Commission did not “find *any* persuasive claims that the requested forbearance from unbundling legacy network elements would advance the goals of section 706.” 25 FCC Rcd at 8644 ¶ 39 (emphasis added). To the contrary, the Commission found, rightly or wrongly, that maintaining unbundling obligations might “increase the incentives of incumbent LECs to upgrade their facilities” and that forbearance might thus subvert those incentives. *Id.* at 8645 ¶ 39. The FCC thus placed a heavy thumb on the scales against forbearance, demanding an unusually high level of rigor in the market analysis presented by the petitioner. As the D.C. Circuit has explained, however, the proper mode of forbearance analysis varies with context and “is ‘informed’ by section 706’s mandate to encourage deployment of broadband services.”<sup>25</sup> And the *Phoenix Order* itself stressed that “a different analysis may apply” whenever section 706 interests are implicated.<sup>26</sup>

Such interests are plainly implicated here. As discussed below, the section 214 process deters ILECs from incurring the costs of all-IP networks because it undermines any clear expectation that they could avoid costs by promptly retiring their redundant legacy networks. And the Commission has always imposed a much more lenient evidentiary burden on parties that, like USTelecom here, seek forbearance from legacy regulatory obligations that threaten the deployment of advanced technologies. In particular, in its orders granting forbearance from such

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<sup>24</sup> 47 U.S.C. § 1302.

<sup>25</sup> *EarthLink, Inc. v. FCC*, 462 F.3d 1, 6 (D.C. Cir. 2006) (citing Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, 21504 ¶ 20 (2004)).

<sup>26</sup> *Phoenix Forbearance Order*, 25 FCC Rcd at 8644 ¶ 39.

obligations—involving broadband unbundling duties under section 271 to dominant carrier requirements for broadband enterprise services—the Commission has relied not on granular market showings, but on broad nationwide assessments regarding competitive trends.<sup>27</sup> For example, in the *Enterprise Broadband Order*, the Commission “analyzed competitive conditions” “without regard to specific, identified geographic markets, finding that relying on specific geographic markets would force the Commission to premise findings on limited and static data that failed to account for all of the forces that influence the future market development.”<sup>28</sup> And the courts have uniformly approved that form of market analysis in the section 706 context because, as they recognize, the law “does not compel a particular mode of market analysis or level of geographic rigor.”<sup>29</sup>

Quite apart from their misplaced reliance on the *Phoenix Forbearance Order*, many of the petition’s opponents advance arguments that, at bottom, simply quarrel with the Commission’s own policy judgments about the need for an expeditious IP transition. For example, Broadview argues that some customers may not want service offered over IP networks, or may be worried about services that do not guarantee a constant power source. Broadview *et al.* Comments at 16-18. COMPTTEL similarly argues (at 13) that customers should be able to object, through the section 214 process, to features of IP-based offerings they may not prefer. But the

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<sup>27</sup> See Memorandum Opinion and Order, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Title II and Computer Inquiry Rules with Respect to its Broadband Services et al.*, 22 FCC Rcd 18705, 18717 ¶ 20 (2007) (“*Enterprise Broadband Order*”), *aff’d*, *Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903 (D.C. Cir. 2009); Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c) et al.*, 19 FCC Rcd 21496, 21504-13 ¶¶ 19-36 (2004), *aff’d*, *EarthLink*, 462 F.3d at 1; *Wireline Broadband Order*, 20 FCC Rcd at 14901-02 ¶ 91, *aff’d*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

<sup>28</sup> *Enterprise Broadband Order*, 22 FCC Rcd at 18717 ¶ 20.

<sup>29</sup> *Ad Hoc*, 572 F.3d at 908 (internal quotation marks omitted); *EarthLink*, 462 F.3d at 8; *Time Warner Telecom*, 507 F.3d at 221.

Commission has already necessarily accounted for and rejected these arguments in calling for the retirement of the PSTN and a swift “transition to an all-IP network.”<sup>30</sup> In the *National Broadband Plan* (at 49), for example, the Commission found “requiring an incumbent to maintain two networks—one copper and one fiber—would be costly, possibly inefficient and reduce the incentive for incumbents to deploy fiber facilities.” And the Commission’s Technology Advisory Council has recommended 2018 as the official PSTN sunset date.<sup>31</sup> In short, it is untenable to cite idiosyncratic nostalgia for the PSTN as a basis for delaying the very network evolution the Commission has declared its intent to expedite. Of course, like any technological change, the transition to all-broadband services and all-IP networks will present challenges. But those challenges can be addressed in nationwide regulatory proceedings such as this. They provide no basis for the continued application of section 214.

For the same reason, it makes no sense to oppose forbearance on the ground that IP-based services will be (as they are today) offered at market rates, which may sometimes exceed the regulated rates for legacy PSTN services.<sup>32</sup> The question is not *whether* those traditionally rate-regulated services will be phased out, but *when*, and the Commission has declared its intent to phase them out sooner rather than later. The Commission has never suggested that it wishes to delay that transition because of questions about its regulatory authority in an all-IP environment. And even if it had such questions, the proper response would be to work with Congress to obtain

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<sup>30</sup> *USF/ICC Reform Order*, 26 FCC Rcd at 17926 ¶ 783.

<sup>31</sup> Technology Advisory Council, *Status of Recommendations*, at 11, 15-16 (June 29, 2011), <http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf>; see Rich Karpinski, *FCC considering exploring ‘end dates’ for the PSTN*, Connected Planet Online (July 7, 2011), <http://blog.connectedplanetonline.com/unfiltered/2011/07/07/fcc-considering-exploring-end-dates-for-the-pstn/>.

<sup>32</sup> See generally Broadview *et al.* Comments at 16-17; NASUCA *et al.* Comments at 22-23.

whatever new authority might be appropriate, not to delay the IP transition—and hold consumers captive to outmoded POTS technologies—simply to maintain regulatory business as usual.

In any event, legacy regulation is unnecessary because, as the Commission has recognized, “competition is the most effective means of ensuring that the charges, practices, classifications, and regulations . . . are just and reasonable, and not unjustly or unreasonably discriminatory.”<sup>33</sup> Here, competition to provide voice services (whether legacy or IP-based) is robust and increasingly intermodal, with fierce competition from conventional CLECs, cable companies, wireless carriers, and over-the-top VoIP providers. Indeed, ILECs are hemorrhaging access lines to these intermodal competitors, and now serve only about a third of residential households:

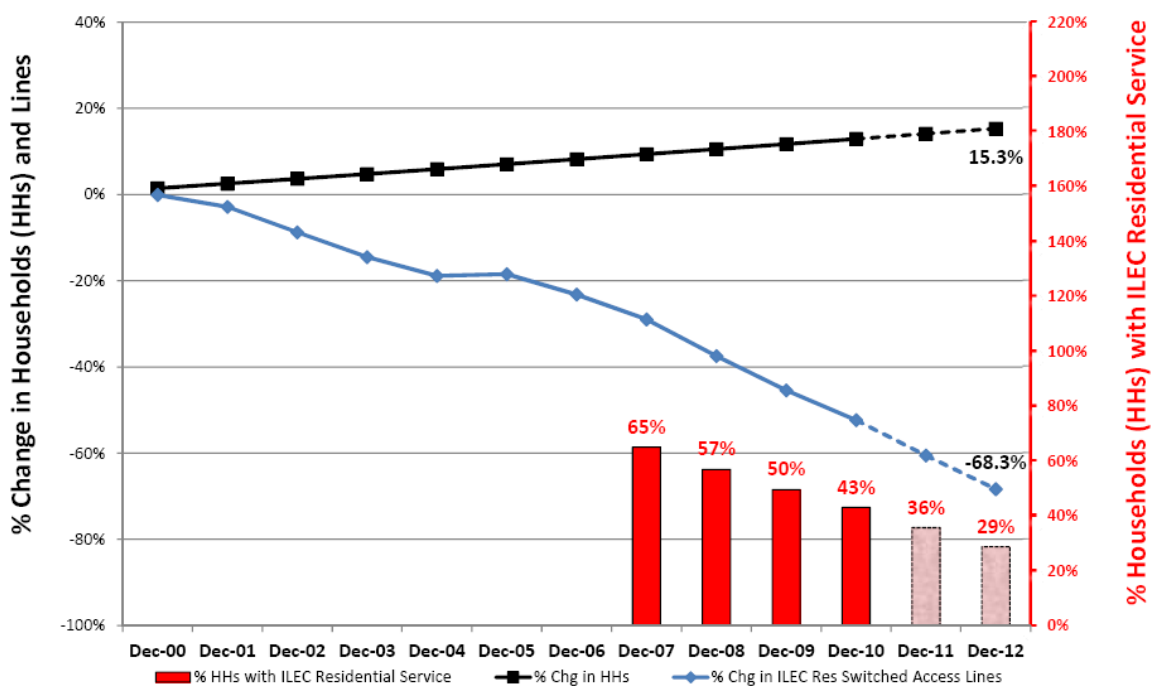


Figure 1: Share of households served by ILECs (AT&T States)  
[Sources: census data and ILEC residential lines from FCC local telephone competition reports (with linear trending)]

<sup>33</sup> Memorandum Opinion and Order, *Petition of US West Communications Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 14 FCC Rcd 16252, 16270 ¶ 31 (1999).

At this point, ILECs are no longer dominant in any relevant market. As to voice services, USTelecom's market analysis demonstrates that "approximately 98 percent of households reside in zip codes that have access to three or more competing carriers or non-ILEC VoIP providers, while over 90 percent of households have their choice of eight or more competitive service providers." Petition, Appendix B, at 3. Moreover, on a state-by-state analysis, wireless and cable substitution for ILEC telephone service is very strong, and "the vast majority of areas enjoy significant facilities-based competition from wireless, cable, or both." *Id.* Approximately one-third of American households have now cut the cord in favor of wireless service, a figure that has skyrocketed over the past half-dozen years and continues to grow. *See id.*, Appendix B, at 4-7. And even within the dwindling category of households that retain wireline voice service, ILECs face intense competition from cable and other VoIP providers.<sup>34</sup> Indeed, one recent analysis found that "there were about 26m VoIP subscribers riding on cable connections at the end of 2010, and just more than 2.5m ILEC/CLEC VoIP customers."<sup>35</sup>

ILECs occupy an even more attenuated position in the marketplace for last-mile broadband connections. In the emerging all IP-environment, there are no "ILECs"; there are simply providers of broadband information services, and ILEC-associated providers may well continue lagging behind cable incumbents in their share of the market for those services. In many (if not most) areas of the nation, ILECs have a much smaller broadband market share than

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<sup>34</sup> See Petition, Appendix B, at 7-8; *see also id.*, Appendix B, at 1-2 (showing a dramatic decrease in the number of telephone lines provided by ILECs); Verizon Comments at 4 (showing the loss of Verizon switched access lines in 2011); Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 77 & Appendix B (filed Feb. 24, 2012) ("In the states where AT&T serves as an ILEC, . . . incumbents have suffered a 52.3 percent drop in their residential lines from December 1999 to December 2010.").

<sup>35</sup> See Richelle Elberg, *Communications Industry Forecasts 2011-2020: ILEC/CLEC and Cable VoIP Lines*, The ILEC Advisor (Oct. 20, 2011), <http://www.jsicapitaladvisors.com/the-ilec-advisor/2011/10/20/communications-industry-forecast-2011-2020-ilecclec-and-cabl.html>.

their cable competitors, as recent FCC figures with respect to residential fixed connections confirm.<sup>36</sup> And recent market analysis confirms that this cable-telco broadband gap is widening in many markets.<sup>37</sup>

In short, market discipline will be more than sufficient to ensure that ILECs' rates remain just and reasonable once ILECs have replaced legacy PSTN services with next-generation all-IP services. Beyond that, as USTelecom points out (at 60), forbearance will in fact promote competition by removing the artificial and uneven burdens imposed specifically on ILECs but not their ascendant cable competitors.<sup>38</sup>

**B. Applying Section 214 When a Carrier Seeks to Replace Its Legacy Services with IP-Based Alternatives Would Affirmatively Harm Consumers**

Forbearance is warranted not only because the regulatory burdens at issue are needless, but also because their continued application would subvert the Commission's and Congress's

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<sup>36</sup> See FCC, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2010*, at 28 Chart 10 (Oct. 2011), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-310261A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310261A1.pdf).

<sup>37</sup> See note 4, *supra* (discussing analyst predictions of cable supremacy).

<sup>38</sup> Several commenters object to the petition on various procedural grounds. See Broadview *et al.* Comments at 15; COMPTTEL Comments at 2-3, 7-8. We defer to USTelecom's response to those procedural objections. In any event, the Commission need not even address these objections because it may grant forbearance "on its own motion," irrespective of the precise contents of any given forbearance petition. Statement of Chairman Julius Genachowski, *Hearing on "FCC Process Reform" Before the H. Subcomm. on Communications and Technology, Committee on Energy and Commerce*, at 3 (July 7, 2011); compare 47 U.S.C. § 160(a), with 47 U.S.C. § 160(c). And section 10(c) mandates that the Commission "shall forbear" when the record shows that the section 10 criteria are met. See 47 U.S.C. § 160(a); see also 47 U.S.C. § 160(c) (creating default rule requiring forbearance whenever the Commission fails to act within the prescribed review period). The Commission cannot avoid that statutory requirement on procedural grounds when it is faced, as it is here, with compelling record evidence warranting forbearance.

broadband objectives. Under section 706, the Commission may—indeed, must—take account of those objectives in exercising its forbearance authority.<sup>39</sup>

As Verizon explains (at 8), the discontinuance requirements of section 214 “inject[] delay and uncertainty into carrier investment decisions.” *In theory*, section 214 applications by dominant carriers can be granted quickly: barring suspension, they are granted automatically on the 60th day after the release of a public notice by the Commission. *In practice*, there is typically a delay, sometimes substantial, after a carrier submits an application and before the Commission issues the public notice that starts the 60-day clock. *See* Verizon Comments at 8. And the Commission can suspend the automatic grant at will. *See* 47 C.F.R. § 63.71(c). Carriers thus face serious uncertainty about when and if the Commission will authorize them to discontinue a service they no longer wish to provide.

Subjecting ILECs to that regulatory uncertainty, particularly when they merely wish to replace legacy services with IP-based alternatives, would thwart a core Commission objective: ensuring appropriate incentives to invest in all-IP broadband networks.<sup>40</sup> Each dollar that a carrier must spend to operate a legacy network is one fewer dollar that it can invest in the deployment of next-generation broadband networks. And it makes no economic sense for a provider to build and maintain two redundant wireline networks without any clear transition plan. It is one thing for a carrier to sink billions of dollars in a new all-IP network if it can count on offsetting those costs with commensurate savings derived from the elimination of its legacy network. It is quite another thing for a carrier to sink billions of dollars in a new all-IP network while continuing to incur all the costs of its now-duplicative legacy network. The more

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<sup>39</sup> *See EarthLink*, 462 F.3d at 8.

<sup>40</sup> *See, e.g.,* Verizon Comments at 8 (“The Commission’s approval process can also be costly, injecting delay and uncertainty into carrier investment decisions.”).

uncertainty a carrier faces in predicting when and how it will save costs from the retirement of its legacy network, the less likely it is on the margin to invest billions of dollars in the new network. Section 214 is a key source of such uncertainty, and it therefore creates substantial investment disincentives for the deployment of all-IP networks.

These concerns are hardly theoretical. By one estimate, ILECs have devoted approximately half of their wireline capital expenditures in recent years to the upkeep of their legacy networks.<sup>41</sup> In other words, an enormous percentage of ILEC capital resources are directed not towards improving broadband speeds or bringing broadband to more customers, but rather towards maintaining increasingly obsolete technologies that can no longer deliver what American consumers and policymakers demand. The Commission should avoid further delays in the shift to an all-IP environment by forbearing from the section 214 discontinuance obligations at the root of these concerns.

Ultimately, the need for forbearance here should not even be controversial because there is ample precedent for it. The Commission accepted the basic logic of forbearance in these circumstances when, in 1994, it forbore from section 214 discontinuance requirements with respect to wireless providers. As the Commission explained then, “the time involved in the decertification process can impose additional losses on a carrier after competitive circumstances have made a particular service uneconomic, and if adequate substitute services are abundantly available, the discontinuance application is unnecessary to protect consumers.”<sup>42</sup> Indeed, the Commission added, such “losses” inflict “social costs” on consumers, costs that the Commission

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<sup>41</sup> Robert C. Atkinson & Ivy E. Schultz, Columbia Inst. For Tele-Info., *Broadband in America: Where It Is and Where It Is Going*, at 29-30 (Nov. 11, 2009), [http://www.broadband.gov/docs/Broadband\\_in\\_America.pdf](http://www.broadband.gov/docs/Broadband_in_America.pdf).

<sup>42</sup> See *Second CMRS Report*, 9 FCC Rcd at 1481 ¶ 182.

can and should exercise its forbearance authority to avoid.<sup>43</sup> The same conclusion applies *a fortiori* here, where the costs of maintaining obsolete and redundant networks are enormous, and where the providers in question seek to *upgrade* their services rather than *eliminate* them.

**II. THE COMMISSION SHOULD FORBEAR FROM APPLYING ITS SHORT-TERM NETWORK CHANGE RULES TO THE EXTENT THEY REQUIRE A DUPLICATIVE PUBLIC NOTICE TO START THE CLOCK FOR OBJECTIONS FROM OTHER CARRIERS**

AT&T also supports USTelecom’s petition for forbearance from rules that “require the issuance of a public notice by the Bureau before network changes can be implemented, even though the carrier has made a filing with the Commission, provided notice on its website, and individually served the appropriate interconnecting service providers.” Petition at 56-59. The short-term network change notification rules—which affect only when, not if, a network change goes into effect—require a redundant round of public notice before the clock may start running on objections from other carriers. This injects unnecessary delay and uncertainty into ILECs’ plans to upgrade their networks. Instead, the window for carrier objections to network changes should open when an ILEC serves its formal notice on interconnecting carriers.<sup>44</sup>

The Commission’s rules specify procedures that an ILEC must follow before making certain changes to its network. *See* 47 C.F.R. § 51.325(a). If the change will go into effect in less than six months, or will involve replacement of copper loops or subloops with fiber facilities, the ILEC must serve an individual notice describing the change on each telephone exchange service provider that directly interconnects with the ILEC’s network. *Id.* § 51.333(a). The ILEC must then wait for the Commission to issue a Public Notice concerning the network change,

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<sup>43</sup> *Id.*

<sup>44</sup> Contrary to the arguments of some commenters, *see, e.g.*, COMPTTEL Comments at 16-17, AT&T does not understand the petition to seek elimination of carriers’ ability to object to short-term network changes. Instead, the question is how and when that objection period should be triggered.

which triggers a nine-business-day window for objections. *Id.* § 51.333(b), (c). Importantly, affected carriers may object to only the *timing* of a network change, and not to the change itself; their only potential remedy is a delay of no more than six months from the ILEC’s initial notice, and they must demonstrate that such a delay is necessary to conform their systems to the ILEC’s network change. *Id.* § 51.333(c)(3)-(f). If no party objects to the network change, the ILEC may proceed with the change on the timeline specified in its notice.<sup>45</sup>

This regime unnecessarily delays beneficial and uncontroversial network changes. Many weeks can pass between the date when the ILEC notifies affected carriers and the date the Commission issues a Public Notice—generally at least 45 to 60 days, and sometimes longer. *See* Petition at 57; Verizon Comments at 9. Because “[a] significant percentage of the network changes made today are directly related to IP upgrades and investment,” this duplicative process injects needless delay and uncertainty into carriers’ plans to upgrade their network with IP capabilities. Verizon Comments at 9. In the vast majority of cases, no objections are ever filed to the network change, meaning that the Public Notice requirement serves only to delay completely unobjectionable changes. Indeed, it appears that, since 2000, only one of AT&T’s network-change notices has generated an objection from any party. *See also* Verizon Comments at 9 (noting that, since December 2011, “not a single customer has challenged any of Verizon’s network changes”).

Instead, the ILEC-provided notice to interconnecting carriers, rather than any later Commission-initiated notice, should start the clock for objections. The notice that the ILEC provides to interconnecting carriers provides ample information about the nature and timing of

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<sup>45</sup> An ILEC must provide at least 90 days’ notice of a network change involving replacement of copper loops or subloops with fiber loops. *Id.* § 51.333(b)(2). No such limitation applies to other short-term network changes.

the network change. *See* 47 C.F.R. §§ 51.327(a), 51.329(a)(2) (describing information that must be contained in the notice). As Verizon explains in its comments (at 9), this “notice given to the customer directly . . . is more than sufficient,” and the requirement of a second public notice only “frustrate[s] and delay[s]” upgrades to carriers’ networks. It follows that this requirement is not necessary to prevent unjust or unreasonable rates, to protect consumers, or to serve the public interest.

Finally, it is no answer to say that there are pending proceedings regarding copper loop retirement and the Commission’s part 51 rules. *See, e.g., Broadview et al.* Comments at 4-6. If there are issues raised in those proceedings that bear on forbearance, the Commission should address those issues here. But the pendency of other arguably related proceedings cannot excuse the Commission from carrying out its statutory forbearance duties. *See AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (availability of other procedures “does not diminish the Commission’s responsibility to fully consider [forbearance] petitions”). “The FCC is required to grant a petition for forbearance if the FCC determines” the statutory criteria “are met,”<sup>46</sup> and Congress has made no exception for matters pending in other proceedings.<sup>47</sup>

### **III. THE COMMISSION SHOULD FORBEAR FROM APPLYING THE PART 32 UNIFORM SYSTEM OF ACCOUNTS AND CONTINUING PROPERTY RECORDS REQUIREMENTS TO PRICE CAP CARRIERS**

AT&T also supports forbearance from the Part 32 USOA and property records rules for price cap carriers. *See* Petition at 34 (“USTelecom . . . seeks forbearance for all price cap

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<sup>46</sup> *Fones4All Corp.*, 550 F.3d at 815.

<sup>47</sup> *See* 47 U.S.C. § 160(a), (c); *see also* Memorandum Opinion and Order, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules*, 23 FCC Rcd 7302, 7309 ¶ 13 (2008) (“*AT&T Cost Assignment Order*”) (rejecting argument that forbearance petition should be denied and relief granted in another proceeding because “section 10 does not allow us the leeway to choose our procedural vehicle and the timing of resolution outside the limitations of section 10”).

regulated carriers from the Part 32 Uniform System of Accounts[.]”); *id.* at 43 (“[T]he Commission should forbear from application to price cap carriers of its property record requirements[.]”). These rules were designed for a rate-of-return era that has long since passed, and they inflict substantial compliance costs on ILECs (and only on ILECs). They are an obvious candidate for forbearance.

The Commission’s USOA rules require carriers to keep two sets of books, consisting of the carrier’s “real books,” which are consistent with GAAP and are currently used by regulatory agencies and others, and the carrier’s Part 32 regulatory books, which the Commission neither uses nor even reviews. *See* Verizon Comments at 11. The Part 32 books, the Commission has explained, were designed “[t]o record company investment, expense, cost and revenue for rate of return regulation,”<sup>48</sup> and were part of a regulatory scheme intended to prevent cost-misallocation and deter cross-subsidization by rate-of-return carriers, *see* Petition at 37. The need for such separate books no longer exists because price cap carriers (such as AT&T) have no incentive to shift costs in this way. *See id.* at 38. The accounting rules thus serve no purpose, and only impose substantial costs on carriers. *See, e.g.,* ACS Comments at 4 (“ACS’s cost of maintaining two sets of books, one for financial and another for regulatory purposes, is extraordinarily high—as much as \$1 million per year.”); Verizon Comments at 11.<sup>49</sup> And because the Commission’s

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<sup>48</sup> *AT&T Cost Assignment Order*, 23 FCC Rcd at 7304 ¶ 3.

<sup>49</sup> In addition, in the *USF/ICC Reform Order*, the Commission made clear that high-cost support for price cap carriers will not be “calculated based on embedded costs.” 26 FCC Rcd at 17723 ¶ 151. Thus, Part 32 accounting records will not be needed to calculate price cap carriers’ high-cost support, and any argument that Part 32 accounting records are somehow needed to administer the Universal Service Fund is clearly wrong. Indeed, the Commission rejected a similar argument in the *AT&T Cost Assignment Order*, noting that “embedded cost inputs are [not] needed for the non-rural high-cost support model” because “[a]lthough the high-cost model initially required some historical cost data, those data are not needed on an ongoing basis.” 23 FCC Rcd at 7322-23 ¶ 37.

rules impose those unnecessary costs on ILECs alone, they also distort the competitive marketplace. Petition at 35.

Of course, after the Commission grants forbearance, price cap ILECs will continue to keep detailed financial information consistent with GAAP, as well as other state and federal accounting standards. Those records provide more than enough information for carriers to comply with requests for information from federal and state regulators.<sup>50</sup> Moreover, in line with the comments of the Vermont Public Service Board (at 1-3), AT&T will continue to work with states (and the Commission) when they need particular information. As the Commission recognized in the *AT&T Cost Assignment Order*, “[w]hen a need exists for jurisdictional information for monitoring or other purposes, AT&T can develop such information to meet those state-specific requirements.”<sup>51</sup> Indeed, since that order, AT&T has fully cooperated with the handful of state commissions that have requested information and has been able to fulfill their regulatory needs.

The commenters that oppose forbearance ask the Commission to continue applying the Part 32 accounting rules to price cap carriers on the apparent theory that, at some unidentified point, there might be some need for the information contained in these non-GAAP reports.<sup>52</sup> But the Commission has previously explained that it cannot maintain reporting rules “in anticipation of a speculative need for the information at some point in the future.”<sup>53</sup> And although some

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<sup>50</sup> See ACS Comments at 4 (“[T]he rules’ original purposes are fully accomplished through carriers’ compliance with [GAAP.]”).

<sup>51</sup> *AT&T Cost Assignment Order*, 23 FCC Rcd at 7321-22 ¶ 34.

<sup>52</sup> See COMPTTEL Comments at 19-21; Sprint Comments at 2-7; NASUCA *et al.* Comments at 27.

<sup>53</sup> Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance From Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, 23 FCC Rcd 18483, 18487-88 ¶ 10 (2008).

commenters argue that Part 32 data could be relevant to ongoing proceedings concerning special access rates or intercarrier compensation reform,<sup>54</sup> those commenters offer no concrete support for their assertion and never explain why GAAP data are insufficient for that purpose.<sup>55</sup> Instead, they merely repeat the same vague warnings that the Commission has already rejected on the other occasions when these same commenters have opposed forbearance relief from obsolete accounting rules. As the Commission concluded in the *AT&T Cost Assignment Order*:

We are not persuaded by commenters' arguments that it is consistent with the public interest to maintain these burdensome Cost Assignment Rules because the resulting data could be useful in pending rulemaking proceedings that broadly consider, among others, universal service, intercarrier compensation, special access, or other reform. . . . We believe that the Commission's possible need for this information in a proceeding at some future point is speculative. . . . [And] we view it as inconsistent with the public interest, under section 10, to maintain costly requirements in exchange for benefits that are speculative in nature and for uses that do not currently exist.<sup>56</sup>

That same logic is dispositive here.<sup>57</sup>

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<sup>54</sup> AT&T and others have explained elsewhere why Part 32 data is irrelevant in the context of special access reform. *See AT&T Cost Assignment Order*, 23 FCC Rcd at 7326 ¶ 45 n.160 (collecting pleadings).

<sup>55</sup> *See* COMPTTEL Comments at 21; Sprint Comments at 2-7.

<sup>56</sup> *AT&T Cost Assignment Order*, 23 FCC Rcd at 7326-27 ¶ 45.

<sup>57</sup> Some commenters point to the ongoing efforts of the Federal-State Joint Board to reform the separations process, speculating that Part 32 data may be necessary in this effort, which involves a number of issues relating to how local exchange carriers apportion costs between interstate and intrastate jurisdictions. *See* California PUC Comments at 7-8; Commissioner Larry S. Landis Comments at 1-3. Here again, the remote possibility that data may be useful for some future purpose cannot justify the substantial costs in keeping these rules in place. But in any event, any jurisdictional separations reforms currently being considered would not apply to carriers, such as AT&T, that have secured forbearance from the Commission's jurisdictional separations rules. *See, e.g.,* Further Notice of Proposed Rulemaking, *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, ¶ 2 & n.2 (rel. Mar. 15, 2012) (noting that "[i]n April 2008, the Commission conditionally granted AT&T's and BellSouth's petitions for forbearance from the Part 36 jurisdictional separation rules" and that the same relief was later "extended ... to Verizon and Qwest").

Other commenters note that the Commission preserved the USOA rules in the *AT&T Cost Assignment Order* and in subsequent compliance plans.<sup>58</sup> But as USTelecom and others have observed,<sup>59</sup> the carriers did not even request forbearance from the accounting requirements in that proceeding, and the Commission has therefore never addressed whether the forbearance criteria have been met with regard to these accounting rules. Indeed, USTelecom reports that, since the *AT&T Cost Assignment Order* was issued, the Commission has never actually requested the data that it required to be kept under the carriers' compliance plans.<sup>60</sup> Of course, if the Commission forbears from the USOA rules, it would be a straightforward task to revise those compliance plans to conform to GAAP accounting practices.

Finally, AT&T supports forbearance from the Part 32 property records rules. As Verizon explains (at 14), “[t]hese rules require ILECs to generate unnecessary, detailed information for all plant accounts such as descriptions of property, location information, date of placement into service, and original cost data.” The Commission tentatively concluded over a decade ago that these burdensome rules should be eliminated “in three years,” explaining that carriers had “ample incentives to maintain a detailed inventory of their property” and that “the record shows” that the Commission’s requirements “impose substantial burdens.”<sup>61</sup> The time has come for the Commission to follow through on that judgment.

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<sup>58</sup> See, e.g., COMPTTEL Comments at 19-20.

<sup>59</sup> Petition at 36; Verizon Comments at 13.

<sup>60</sup> Petition at 37; see Verizon Comments at 13 (“In the nearly four years since that plan was filed in 2008, the agency has never once requested data from Verizon, let alone specific Part 32 data.”).

<sup>61</sup> Report and Order and Further Notice of Proposed Rulemaking, *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911, 19987 ¶ 212 (2001).

## CONCLUSION

The petition should be granted.

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April 24, 2012

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